

FCC MAIL SECTION

Before the
 APR 29 1989 FEDERAL COMMUNICATIONS COMMISSION FCC 99T-08
 Washington, D.C. 20554

DISPATCHED BY

90447

In re Applications of	)	CC DOCKET NO. 91-142
)	
ALGREG CELLULAR ENGINEERING	)	File No. 10607-CL-P-307-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 307, Alabama 1 - Franklin)	
)	
CRANFORD CELLULAR COMMUNICATIONS	)	File No. 10611-CL-P-311-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 311, Alabama 5 - Cleburne)	
)	
BAY CELLULAR OF FLORIDA	)	File No. 10754-CL-P-497-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 497, Mississippi 5 -)	
Washington)	
)	
FLORIDA CELLULAR	)	File No. 10445-CL-P-505-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 505, Missouri 2 - Harrison)	
)	
A-1 CELLULAR COMMUNICATIONS	)	File No. 10454-CL-P-514-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 514, Missouri 11 - Moniteau)	
)	
BRAVO CELLULAR	)	File No. 10673-CL-P-579-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 579,)	
North Carolina 15 - Cabarrus)	
)	
ALPHA CELLULAR	)	File No. 10909-CL-P-586-A-89

)
For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 586, Ohio 2 - Sandusky)
)

CEL-TEL COMMUNICATIONS)

File No. 10912-CL-P-589-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 589, Ohio 5 - Hancock)
)

EJM CELLULAR PARTNERS)

File No. 10567-CL-P-596-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 596, Oklahoma 1 - Cimarron)
)

PINELLAS COMMUNICATIONS)

File No. 10808-CL-P-613-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 613, Pennsylvania 2 -)
McKean)
)

CENTAUR PARTNERSHIP)

File No. 10720-CL-P-631-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 631, South Carolina 7 -)
Calhoun)
)

SIGNAL CELLULAR COMMUNICATIONS)

File No. 10721-CL-P-632-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 632, South Carolina 8 -)
Hampton)
)

A-1 CELLULAR COMMUNICATIONS)

File No. 10409-CL-P-661-A-89
)

For facilities in the Domestic Public Cellular)
Telecommunications Radio Service on Frequency)
Block A, in Market 661, Texas 10 - Navarro)
)

EJM CELLULAR PARTNERS)

File No. 10116-CL-P-721-A-89
)

For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 721, Wyoming 4 - Niobrara)	
)	
SATELLITE CELLULAR SYSTEMS	)	File No. 10037-CL-P-318-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 318, Arizona 1 - Mohave,)	
for Station KNKN 268)	
)	
JAYBAR COMMUNICATIONS	)	File No. 10042-CL-P-323-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 323, Arizona 6 - Graham,)	
for Station KNKN 251)	
)	
DATA CELLULAR SYSTEMS	)	File No. 10029-CL-P-345-A-88
	)	File No. 07080-CL-P-MP-91
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 345, California 10 - Sierra,)	
for Station KNKN 250)	
)	
CELLULAR PACIFIC	)	File No. 10031-CL-P-346-A-88
	)	File No. 06606-CL-MP-90
	)	File No. 06688-CL-MP-90
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 346, California 11 -)	
El Dorado, for Station KNKN 252)	
)	
NORTH AMERICAN CELLULAR	)	File No. 10066-CL-P-388-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 388, Idaho 1 - Boundary,)	
for Station KNKN 253)	
)	
ALPHA CELLULAR	)	File No. 10318-CL-P-410-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 410, Indiana 8 - Brown, for)	
Station KNKN 340)	

For assignment of Station KNKN 340 in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 410, Indiana 8, RSA

File No. 04924-CL-AL-1-90

ALEE CELLULAR COMMUNICATIONS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 555, New Mexico 3 -
Catron, for Station KNKN 271

CRYSTAL COMMUNICATIONS SYSTEMS

For facilities in the Domestic Public Cellular
Telecommunications Radio Service on Frequency
Block A, in Market 606, Oregon 1 - Clatsop,
for Station KNKN 309

Adopted: April 26, 1999; Released: ~~April 28, 1999~~

INTRODUCTION

¹ Algleg Cellular Engineering, Memorandum Opinion and Order, 12 FCC Rcd 8148 (1997) (affirming in part and denying in part review of the HDO and the Review Board Decision) (Algleg Cellular Engineering). See also 9 FCC Rcd 5098 (Rev. Bd. 1994) (Review Board Decision), recon. denied, 9 FCC Rcd 6753 (Rev. Bd. 1994), affirming, 7 FCC Rcd 8686 (ALJ 1992) (ALJ Decision), 6 FCC Rcd 2921 (Com. Car. Bur. 1991) (HDO). Some of the parties have changed since issuance of the Commission's decision. For clarity, this order will refer to the parties by their original names. The full names that correspond to the abbreviated names in this order are listed in the Appendix.

DISCUSSION

2. The Cellular Corporation (TCC) prepared and filed cellular applications in 428 markets between July 1988 and January 1989. Applications prepared by TCC that won RSA lotteries but which had not been awarded licenses prior to the issuance of the hearing designation order (HDO) in this proceeding included Algreg Cellular Engineering, Alpha (for the Ohio 2 RSA), A-1 Cellular Communications, Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida Cellular, Pinellas, and Signal (Applicants). Applications prepared by TCC that had already received licenses when the HDO was issued included Alee, Alpha (for the Indiana 8 RSA), Cellular Pacific, Crystal, Data, Jaybar, North American, and Satellite (Licensees).² Each of the Applicants and Licensees participated in a risk-sharing agreement which they subsequently rescinded.³

3. In Algreg Cellular Engineering, the Commission reversed the Bureau's determinations in the HDO that participation in the risk-sharing agreements rendered the applications defective and reflected adversely on the Applicants' and Licensees' qualifications. The Commission therefore set aside the Review Board's decision dismissing the applications and revoking the licenses. The Commission granted the applications (with the exception of the applications filed by EJM, Centaur and Bravo) and terminated the revocation proceeding with respect to all of the Licensees except for Alee.⁴ The Commission also determined that, because the language of section 22.129 of the rules⁵ is explicitly limited to agreements to

² Algreg Cellular Engineering at 8152-53.

³ The risk-sharing agreements provided that, in the event any signatory applicant won the lottery, that licensee would retain ownership and control of the cellular system, but each signatory to the Agreement would have the right to receive income and sales proceeds from the signatories whose RSA applications had been granted. Algreg Cellular Engineering at 8152-53.

⁴ Algreg Cellular Engineering at 8151-52 (the applications filed by EJM, Centaur and Bravo could not be granted based on the record and those applications were remanded to the Bureau for expedited consideration); id. at 8175-81 (finding that Alee's lack of candor concerning its alien general partner warranted revocation of its license).

⁵ 47 C.F.R. § 22.129 (providing that "[p]arties that have filed . . . a petition to deny, informal objection or other pleading against a pending applicant in the Public Mobile Services and then seek to withdraw or request dismissal of . . . the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC"); see also 47 C.F.R. § 22.129(a) (providing that such parties must also submit a copy of any written agreement related to the withdrawal or dismissal, and submit an affidavit setting forth certification that the parties have not received any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application or petition).

dismiss or withdraw pleadings against a pending applicant, Commission approval was not required for agreements to withdraw or dismiss pleadings filed against a licensee.⁶

4. AALA and Pacific filed petitions for reconsideration of Algreg Cellular Engineering. AALA, all of the Applicants, the remaining Licensees (i.e., Data, Cellular Pacific, Jaybar, North American, and Satellite), and Alee subsequently notified the Commission that they had entered into settlement agreements resolving "all litigation among and between them[.]"⁷ In conjunction with the Joint Notice, AALA, the remaining Licensees, and Alee filed requests that the Commission dismiss certain pleadings they had filed in this proceeding.⁸

5. Because the settlement agreements between AALA, the remaining Licensees, and Alee are not subject to Commission approval, we grant their requests and dismiss the pleadings referred to in note 8, above. Alee does not request (nor do we grant) dismissal of its petition for partial reconsideration filed July 3, 1997, nor does it request dismissal of its

⁶ Algreg Cellular Engineering at 8180. Specifically, the Commission concluded that the settlement agreement between AALA and Crystal, the licensee of the Oregon 1 RSA market, was outside the scope of section 22.129 and could be effectuated without Commission approval. The Commission likewise determined that the portion of the settlement agreement between AALA and Alpha involving Alpha's authorization for the Indiana 8 RSA was beyond the scope of section 22.129. The Commission found, however, that the portion of the agreement relating to Alpha's pending application in the Ohio 2 RSA market was subject to the provisions of section 22.129 and that further submissions were required before Commission approval could be granted. Algreg Cellular Engineering at 8183-86.

⁷ Joint Notice of Settlement Agreements and Request for Rulings at 2 and 5 (filed Feb. 5, 1999) (Joint Notice).

⁸ See Data, Cellular Pacific, and North American Notice of Dismissal of Petition for Reconsideration and Related Pleadings (filed Feb. 5, 1999) (requesting dismissal of their petition for partial reconsideration filed June 3, 1997, and their reply to the opposition to that petition filed by AALA on July 3, 1997); Jaybar and Alee Joint Notice of Dismissal of Pleadings (filed Feb. 5, 1999) (Jaybar and Alee dismiss with prejudice the July 16, 1997 opposition to petition for reconsideration filed by AALA; Alee dismisses its reply to the opposition and partial opposition filed July 28, 1997, to the extent it replies to AALA's July 16, 1997 opposition); AALA Notice of Dismissal of Pleadings (filed Feb. 5, 1999) (dismissing with prejudice: (1) the petition for reconsideration filed July 3, 1997, seeking reconsideration of the Commission's decision to terminate license revocation proceedings against Jaybar, Cellular Pacific, Data, and North American, (2) the opposition to partial reconsideration of Alee, filed July 16, 1997; (3) the opposition to petition for partial reconsideration of Cellular Pacific, Data, and North American, filed July 16, 1997, and (4) the consolidated reply to oppositions to petition for reconsideration filed by Cellular Pacific, Data, and North American, and by Jaybar, filed July 28, 1997).

reply to the opposition and partial opposition filed July 28, 1997 to the extent that it includes matters not in response to AALA's opposition. In light of the arguments presented by the parties as to the applicability of section 22.129 to the agreements involving the Applicants, those matters will be considered by the Commission in a subsequent order. Because the Commission terminated the revocation proceedings involving licensees Satellite, Crystal, and Alpha for the Arizona 1, Oregon 1, and Indiana 8 RSA markets, respectively,⁹ we also grant their request that they each be severed from the Algreg proceeding on a prospective basis for purposes of these markets.¹⁰ For the same reason, we sever the other licensees (i.e., Data, Cellular Pacific, Jaybar, and North American) from the Algreg proceeding on a prospective basis with respect to the California 10, California 11, Arizona 6, and Idaho 1 RSA markets, respectively.

ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c):

(a) Data, Cellular Pacific, and North American's Notice of Dismissal of Petition for Reconsideration and Related Pleadings (filed Feb. 5, 1999) (requesting dismissal of their petition for partial reconsideration of the Commission's decision in Algreg filed June 3, 1997, and their reply to the opposition to that petition filed by AALA on July 3, 1997) IS GRANTED;

(b) Jaybar and Alee's Joint Notice of Dismissal of Pleadings (filed Feb. 5, 1999) (Jaybar and Alee dismissing with prejudice the July 16, 1997 opposition to petition for reconsideration filed by AALA, and Alee dismissing its reply to the opposition and partial opposition filed July 28, 1997, to the extent that it replies to AALA's July 16, 1997 opposition) IS GRANTED;

(c) AALA's Notice of Dismissal of Pleadings (filed Feb. 5, 1999) (dismissing with prejudice: (1) the petition for reconsideration filed July 3, 1997, seeking reconsideration of the Commission's decision to terminate license revocation proceedings against Jaybar, Cellular Pacific, Data, and North American, (2) the opposition to partial reconsideration of Alee, filed July 16, 1997; (3) the opposition to petition for partial reconsideration of Cellular Pacific,

⁹ Algreg Cellular Engineering at 8189-90 (terminating the revocation proceeding with respect to Satellite and Crystal). Alpha complied with the condition attached to the Commission's ruling on its license for the Indiana 8 RSA market in Algreg Cellular Engineering by filing a formal rescission of the mutual risk sharing agreement on June 11, 1997.

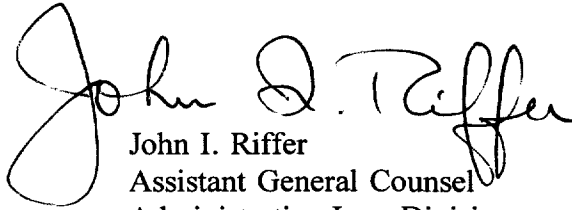
¹⁰ Request for Declaration of Finality or for Other Relief filed by Alpha, Satellite, and Crystal (filed Feb. 24, 1999).

Data, and North American, filed July 16, 1997, and (4) the consolidated reply to oppositions to petition for reconsideration filed by Cellular Pacific, Data, and North American, and by Jaybar, filed July 28, 1997) IS GRANTED;

(d) The Request for Finality or for Other Relief filed by Alpha, Satellite, and Crystal IS GRANTED to the extent that they request that they be severed from the Algreg proceeding on a prospective basis for purposes of their licenses for the Indiana 8 RSA, the Arizona 1 RSA, and the Oregon 1 RSA markets, respectively, effective upon the date of release of this order; and

(e) Data, Cellular Pacific, Jaybar, and North American SHALL BE SEVERED from the Algreg proceeding effective upon the date of release of this order for purposes of their licenses for the California 10, California 11, Arizona 6, and Idaho 1 RSA markets, respectively.

FEDERAL COMMUNICATIONS COMMISSION



John I. Riffer
Assistant General Counsel
Administrative Law Division

Attachment

APPENDIX

A-1 Cellular: A-1 Cellular Communications, Alee, Cel-Tel, Cranford, EJM, and Jaybar
AALA: Applicants Against Lottery Abuse, Buckhead, CAC, CFL, Miller, Skywave, and ZDT
Alee: Alee Cellular Communications
Algreg: Algreg Cellular Engineering, A-1 Cellular, Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida Cellular, Pinellas, and Signal
Alpha: Alpha Cellular
Bay Cellular: Bay Cellular of Florida
Bravo: Bravo Cellular
Buckhead: Buckhead Cellular Communications Partnership
CAC: Cellular Applicants' Coalition
Cel-Tel: Cel-Tel Communications
Centaur: Centaur Partnership
CFL: Thomas Domencich, the Committee for a Fair Lottery
Cranford: Cranford Cellular Communications
Crystal: Crystal Communications Systems
Data: Data Cellular Systems
EJM: EJM Cellular Partners
Jaybar: Jaybar Communications
Miller: Miller Communications, Inc.
North American: North American Cellular
Pacific: Cellular Pacific, Data, and North American
Pinellas: Pinellas Communications
Satellite: Satellite Cellular Systems
Signal: Signal Cellular Communications
Skywave: Skywave Partners, Inc.
ZDT: ZDT Partnership